



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/291,656	03/03/1999	MARC PETERS-GOLDEN	UM-03662	2349
7590 03/24/2004				
Medlin & Carroll LLP 101 Howard Street Suite 350 San Francisco, CA 94105				
EXAMINER CARLSON, KAREN C				
ART UNIT		PAPER NUMBER		
1653				

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/291,656

Applicant(s)

PETERS-GOLDEN ET AL.

Examiner

Karen Cochrane Carlson, Ph.D.

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-25 and 27-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-25 and 27-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1653

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 20, 2004 has been entered.

Claims 1-21 and 26 have been canceled. Claims 22-25 and 27-37 are currently pending and are under examination.

The Claims have been amended to include an antibiotic. These Claims have been previously presented in the paper filed September 26, 2002. This same rejection below was made in the final office action mailed November 27, 2002.

The disclosure is objected to because of the following informalities: The cross-reference to parent applications should be set forth on page 1 of the specification.

Appropriate correction is required.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-25 and 27-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gosselin et al. (USP 5,789,441; priority to February 15, 1996).

Gosselin et al. teach leukotriene LTB₄ in a sterile liquid (cols. 11-13 and Example I, col. 14, lines 15-16, for example). The term "LTB₄" includes leukotrienes C₄, D₄, and E₄ (col. 6, line 52).

Art Unit: 1653

Gosselin et al. do not expressly teach that to include an antibiotic to the a solution comprising a sterile liquid and a leukotriene. However, at col. 5, lines 24-29, Gosselin et al. states that the invention provides for the use of an LTB₄ agent as a therapeutic against Gram+ and – infections, or fungal infections alone or in association with other antibacterial or antifungal agents.

Therefore, it would have been obvious to a person having ordinary skill in the art to include an antibiotic in a solution comprising a sterile liquid and a leukotriene (Claims 22, 26, 27, 28, 32, 33, 37), wherein the leukotriene is LTB₄ (Claims 23, 29, 34), or wherein the leukotriene is a cysteinyl leukotriene (Claim 24, 3, 35) such as leukotrienes C₄, D₄, and E₄ (Claims 25, 31, 36) because Gosselin et al. suggests to use LTB₄ with an antibacterial or antifungal agent against Gram+ and – infections, or fungal infections.

While the claims recite that the solution aerosolized this phrases is given no patentable weight. See *Union Oil Co. of California v. Atlantic Richfield Co.*, 54 USPQ2d 1227, *In re Rosicky*, 125 USPQ 341; *In re Riden et al.*, 138 USPQ 112; *In re Lerner* 169 USPQ 51. Therefore, the Claims are obvious over Gosselin et al. as set forth above.

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the

Art Unit: 1653

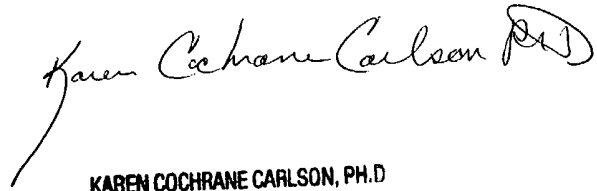
THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen Cochrane Carlson, Ph.D. whose telephone number is 571-272-0946. The examiner can normally be reached on 7:00 AM - 4:00 PM, off alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Christopher Low can be reached on 571-272-0951. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

March 16, 2004


KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER